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What Every Home Builder Should Know



ONTARIO
NEW HOME
WARRANTY
PROGRAM



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About the Ontario New Home Warranty Program

New home buyers in Ontario receive substantial warranty protection, set out in the Ontario New Home Warranties Plan Act. A non-profit corporation, the Ontario New Home Warranty Program (ONHWP) administers the Act—registering builders, enrolling new homes and resolving disputes. The Program is paid for by fees builders and vendors pay to register with ONHWP and to enrol the new homes they sell.

The Program also provides information about builders and home buying to consumers, technical assistance to builders, and informs lawyers, real estate agents and mortgage lenders about the Program and the Act.

ONHWP has offices across the Province and reports annually to the Ontario Legislature through the Minister of Consumer and Commercial Relations.

How the Program works

Anyone building or selling a new home in Ontario must register with ONHWP, and enrol each new home or condominium unit. When a home is completed, the buyer and builder sign a Certificate of Completion and Possession (CCP) which confirms to the Program that the sale has taken place. The CCP is also the place for the buyer to note any repairs required. The builder sends the CCP to the Program, and the Program sends the buyer a Warranty Certificate and information package.

Basic warranty protection from the builder is for one year for most items, and two years for some items (see the section, What is Covered). Coverage for Major Structural Defects is for seven years. Problems arising during the builder's warranty period should be brought to the builder's attention by the buyer during the

warranty period. If the builder does not correct the problems, the Program will help resolve the dispute.

What is Covered

1. **Deposits.** New home purchasers are covered for financial loss, including loss of deposits and interest, to a maximum of \$20,000 if the builder cannot or will not complete the sale through no fault of the purchaser. (This refers to completing the sale of the home, not its construction.)
2. **Incomplete work.** If a person has title to a home or condominium unit and is living in it, ONHWP will compensate them for completion of any unfinished work to a maximum of 2 per cent of the home's price or \$5,000 — whichever is more. The incomplete items must be part of the Agreement of Purchase and Sale. People living in a condominium unit who do not yet have title, and find some work left undone, should call the builder. If they require further help after that they should contact us, and we will contact the builder.
3. **Basic warranty. defects in workmanship and materials (1 year).** The builder warrants for one year from the date on the Warranty Certificate that the home is free from defects in workmanship and materials, is fit to live in and meets the Ontario Building Code.
4. **Two-year warranty:**
 - A) **"Power Train" Items.** For homes enroled after December 31, 1990, the builder warrants that the home is fit to live in, that it is free of violations of the Ontario Building Code's health and safety provisions, that it is free of defects in material or workmanship in the electrical, plumbing, and heating delivery

distribution systems; in the exterior cladding, caulking, windows and doors; and that the building envelope (all parts of the structure that contain the living space) is free of water penetration.

B) Basements leaks. The builder warrants for two years that the basement remains free of water penetration through the foundation. In condominiums, this protection includes all below-ground areas such as parking garages.

5. Major Structural Defects (7 years). For homes enroled after December 31, 1990, the purchaser is protected for seven years against Major Structural Defects. For homes enroled before that date, the protection lasts for five years. Coverage under this provision is by the builder initially, and after the builder's warranties expire, it becomes the responsibility of the Program. Under the Act, a major structural defect is defined as any defect that results in failure of a load-bearing part of the house's structure, or defects in materials or workmanship that adversely affect the use of the building as a home.

6. Delayed closings & Delayed occupancy. Similar rules govern delays in the closing date, and, for condominium units, delays in the occupancy date.

A) Delayed closings. The builder must not delay the closing date without notifying the purchaser. For minor delays of no more than 15 days, the purchaser must be notified at least 35 days before the original closing date. For longer delays, the builder must give at least 65 days' notice and set a new closing date. In either case, the builder gets five days without penalty. Beyond that, purchasers can claim compensation of up to \$5,000 for out-of-pocket expenses resulting from the delay.

To be compensated, the purchaser must close the sale. Purchasers are covered for reasonable moving costs and the cost of storing possessions, plus up to \$100 a day in living expenses. Claim forms are available through builders. Receipts are needed for out-of-pocket expenses, although receipts aren't required for incidental expenses of up to \$25 a day.

Exceptions.. There is no compensation for delays caused by things out of the builder's control, such as floods, natural disasters, or fires and strikes.

B) Delayed occupancy in condominiums.

For all condominium purchase agreements signed on or after March 1, 1991, the following rules apply:

- ☐ Every Agreement of Purchase and Sale must give either a confirmed occupancy date, or a tentative occupancy date that is clearly labelled tentative. If it gives a tentative date, the purchaser has the right to receive notice of when he or she will be told the confirmed occupancy date. The notice is to be based on a date or event that will trigger it — for example, the purchaser is told that he or she will be given the confirmed date when the foundation is complete, or when some other stage in construction is reached.
- ☐ The purchaser must be given this notice no later than 120 days before the confirmed date, and no later than 30 days following completion of the roof assembly.
- ☐ If the purchaser is not given notice of the confirmed date by 90 days prior to the tentative date in the original agreement, then the tentative date automatically becomes the confirmed date.
- ☐ The builder is allowed to offer occupancy earlier than the confirmed date, but is not allowed to demand it. The purchaser must consent to it in writing.

- ❑ As is the case for delayed closings for houses, the vendor may extend the confirmed occupancy date **once** by up to 120 days, if the purchaser is given written notice at least 65 days before the confirmed date. The vendor can also have a 15-day extension if the purchaser is given 35 days' notice.
 - ❑ In all cases, vendors are permitted a five-day grace period when they give notice to their purchasers. Beyond that, any vendor who fails to give proper notice will be required to give the purchaser compensation of up to \$100 a day for living expenses and other expenses incurred as a result of the delay, to a maximum \$5,000 total direct costs.
 - ❑ A vendor is **not** responsible for delays caused by strikes, fires, civil insurrection, floods or "Acts of God."
7. **Substitutions.** Purchasers are protected against substitutions of key elements in a new home or condominium unit, and in condominium common elements. If significant changes are made without approval, purchasers may be able to cancel the agreement and get their deposit back, and/or claim damages up to \$20,000.

Examples of builder substitutions not allowed include:

- Major changes to the original plan
- Reverse ("mirror image") plan
- House model and style of exterior
- Brick color and type of exterior finishes
- Exterior dimensions of the house
- Condominium unit model and style

The Agreement of Purchase and Sale may also give purchasers the right to choose certain colors and styles. If so, the builder cannot substitute these without consent. If he does, purchasers can demand that they be changed back, or the builder must make a cash settlement. Examples include:

- Interior and exterior paint colors (not shadings)
- Design and color of cabinets and countertops
- Color and type of kitchen and bath fixtures
- Style of interior trim
- Floor finishes

If the builder cannot supply a certain choice of color or finish, the purchaser must be notified in writing. She or he then has seven days to make new selections. If they don't, the builder has the right to substitute options of equal or better value.

NOTE: The maximum liability for warranty coverage on any new home or condominium unit is \$100,000. Individual condominium units are protected in the same way as houses. Common condominium elements are also covered from the date the project is registered, up to a maximum of \$50,000 times the number of units, to a maximum of \$2.5 million.

What is not covered

1. **Unfinished homes.** The Program does **not** employ contractors to complete unfinished homes (Although we do compensate for incomplete work in homes that are sufficiently complete to meet the definition of a home under the Act — see the section on Incomplete Work). In a custom-built home being constructed under contract, it is the purchaser's responsibility to supervise and pay for completion, and to comply with the Construction Liens Act. For other homes, it is the builder's responsibility to complete the items specified in the Agreement of Purchase and Sale.
2. **Defects in materials,** design and workmanship in anything supplied by the purchaser.
3. **Secondary damage** resulting from defects

- that are under warranty. The defects themselves are covered, but the personal or property damage they may cause is not.
- 4. **Normal** wear and tear.
- 5. **Normal shrinkage** of materials that dry out after construction.
- 6. **Damage** caused by dampness or condensation caused by the homeowner not maintaining adequate ventilation.
- 7. **Damage** caused by improper maintenance.
- 8. **Changes** made by the purchaser.
- 9. **Settling soil** in land around the house or along utility lines. (However, soil settlement under the building foundation itself is covered.)
- 10. **Damage** due to the effects of floods or acts of God, the owners, tenants, guests, wars, riots, insurrection, civil commotion or vandals.
- 11. **Damage** from insects and rodents (except when the construction did not meet the Ontario Building Code).
- 12. **Damage** caused by municipal services and other utilities.
- 13. **Surface defects** in workmanship and materials that were noted in writing and accepted by the owner at the date of possession.
- 14. **Temporary or seasonal dwellings** (such as cottages) that are not built on a permanent foundation and do not have insulation that would make them habitable year-round.

15. **New homes** built on existing footings or foundations.

Your responsibilities as a builder

Under the law, builders have many responsibilities:

- ☞ To register with ONHWP and renew their registration each year as long as they wish to keep building.
- ☞ To enrol each new home or condominium before marketing or construction.
- ☞ To build at least to the standards of the Ontario Building Code.
- ☞ To meet the terms of their contracts with buyers.
- ☞ To complete the proper forms relating to a sale — the Agreement of Purchase and Sale and its Addendum, the ONHWP Deposit Receipt for condominiums and the Certificate of Completion and Possession.
- ☞ To promptly fix warranted defects reported in writing by the homeowner during the term of the warranty. Under the Ontario New Home Warranties Plan Act, a builder cannot ask buyers to waive their warranty rights. Doing so can result in serious legal problems for the builder.
- ☞ Vendor/builders must inform ONHWP about the following changes in their business, within 15 days of the change:
 - A change of address
 - A change in the organization's members or partners, if the organization is not a corporation

- A change in the corporation's officers or directors
- Anyone who, directly or indirectly, owns more than 10 per cent of the voting shares in the corporation.

Other things to remember:

- ☞ Include your registration number on every letter and document you send us.
- ☞ Once a home is enrolled, include its enrolment number, lot and plan number (or address and unit number for condominiums) on any documents and letters about that home.
- ☞ Type or print legibly all documents.
- ☞ Make sure all forms are properly signed, affixing your corporate seal if you're a corporation.
- ☞ Make any cheques payable to Ontario New Home Warranty Program.

When you register as a vendor/builder, remember that each company you form must be registered separately. Send your application for registration well ahead of the date you want to start construction and/or marketing — under the Ontario Building Code Act, you won't be granted building permits until you're registered with us.

To register, call your local ONHWP office and ask for a registration kit. When you get it, fill out the application for registration, answering all questions completely so we have as much information as possible. If a question doesn't apply to you, don't leave it blank — put "not applicable" in the answer space. We'll be checking on your answers before granting your registration, so be sure you're accurate.

All financial information you provide is strictly confidential.

Along with your application form, we'll need:

- ✓ A cheque for your registration fee
- ✓ Two copies of the completed vendor/builder agreement
- ✓ A reference from your banker
- ✓ A statutory declaration that you'll include the Addendum to every Agreement of Purchase and Sale
- ✓ Financial statements.
- ☐ For individuals, we need a statement of your business operations or a sworn statement of your personal net worth, showing assets and liabilities.
- ☐ For partnerships or joint ventures, a complete financial statement of the partnership (or, if it's newly formed, statements of personal net worth or corporate statements from each partner).
- ☐ For corporations, we need a complete financial statement. If the corporation is newly formed, then we need a guarantee signed by the corporation's principals (as individuals, not as officers of the corporation), supported by personal statements of net worth for each person.
- ☐ If the corporation's principals are corporations themselves, they should sign the guarantee under their own corporate seal, supported by their financial statements.

Once you're registered, we'll send you renewal forms and a declaration of enrolment fees before

your annual renewal date. We'll also review your record with the Program and your current financial status before renewing your registration.

Although your financial information remains confidential, other information — your registration date, units enrolled, where you've built and your after-sales service record — will be made available to consumers.

Enrolling the homes you build

For each home you want to enrol, request an ONHWP Enrolment Form. Include the correct street address and a complete legal description of the home. If there isn't a street address yet, write "not yet available."

Send one copy of the completed form to us promptly, along with your cheque for the enrolment fee. We'll send you confirmation of enrolment of the home and a Certificate of Completion and Possession, to be filled out when closing or occupancy takes place.

For condominiums, the enrolment process is slightly different: Before you begin construction or marketing you must post a bond, letter of credit, cash or other form of security, to a maximum of \$20,000 per unit. The Program may agree to reduce the amount of security from time to time, but the security on each unsold unit stays with us until we have proof that the buyer has taken title to the unit.

You must also provide us with an Enrolment of Condominium List, showing the address, the number of units, and each unit's price and square footage. Send the list to us not later than 30 days prior to construction and/or marketing, along with the enrolment fees for each unit and for the common elements.

Once enrolment is complete, we'll send you a numbered series of ONHWP Deposit Receipts, to hand out to each buyer who makes a deposit.

When you sell a new home

Be sure you attach the ONHWP Addendum to every Agreement of Purchase and Sale. The Act requires it.

You must give buyers notice of delays in closing. You must also get their consent for substitutions. Tell your customer if you can't supply an option specified in the contract. If the customer does not make alternate selections within seven days, you may substitute things of equal or better value.

You and the buyer must fill out and sign the Certificate of Completion and Possession, preferably on the day of closing. The certificate should list defects to be repaired or work to be completed, and should specify the date of possession, which is when your warranty responsibility begins. It should also list defects noted by the homeowner and accepted at the time of possession. One copy should be sent to us, one goes to the buyer, and one is for your records.

The defects listed on it will help establish which defects existed at time of possession. However, you are also responsible for defects that appear later, under the builder's warranty periods.

It's important to fill out the certificate and send it to us without delay. Only after we receive it can we send the new owner the Warranty Certificate.

If you're selling condominium units, also fill out a CCP for the project's common elements, after the condominium corporation is registered and a board of directors elected. It should be signed by you and an authorized representative of the condominium's board.

After the sale

Your responsibility to the buyer continues after the sale. Basic warranty coverage is for one year,

but some areas are covered for more than one year. During these warranty periods, you must repair defects at your expense. You're also responsible for work done by subcontractors, so deal with reliable people.

The buyer will usually contact you directly about any problems. Act quickly to resolve them. If you and your customer cannot agree on whether a defect is warranted, ONHWP will conciliate the dispute, at the owner's request. If we have to conciliate many such disputes with you, we charge you \$500 for each conciliation beyond the ratio of one in every 25 homes you build.

If, for any reason, you fail to live up to your warranty obligations, you risk forfeiting your registration under the Program. If you do not fix defects according to a conciliator's decision, ONHWP will have the work done by others and invoice you for the cost, plus a 15 per cent administration fee.

Your record on after-sales service is also published in our Home Buyer's Guide to Ontario Builders, so quality workmanship and a responsive attitude toward your buyers will pay off for your business all around.

☆ **The Program's Technical Research and Training department offers educational materials to help builders improve their after-sales service.**

Of special interest to condominium builders

Condominium buyers receive full warranty protection, like any other home buyers. But because condominiums are made up of both individual units and shared areas called the common elements, there are some differences:

- ❑ Condominiums have two sets of warranties: One for the homeowner covering his or her

unit and another for the condominium corporation and its board of directors, covering the common elements of the building.

- ❑ Once the project is registered as a condominium corporation, a Board of Directors, representing the unit owners, is elected. The Board should arrange with the builder for the Certificate of Completion and Possession on the common elements.
- ❑ Common elements are covered from the date the condominium corporation is registered, but an individual unit is covered from the date the purchaser moves in.
- ❑ Closing dates depend on registration and are out of the builder's control, so condominium buyers aren't compensated for delays in closing. (However, there are rules governing delays in occupancy, as mentioned in the section, *What is Covered*.)
- ❑ Condominium unit owners should write to their board of directors (once the condominium is registered) about any problems in the common elements. The board should then take the complaint to the builder and to ONHWP, if necessary.
- ❑ The board may then ask ONHWP for a "pre-conciliation meeting," to bring them together with the builder and an ONHWP representative, who will try to negotiate a settlement. If a settlement cannot be negotiated, the next step is for the board to ask for a conciliation. This is another meeting between both sides and an ONHWP representative, who will make a written ruling on whether the defects are covered by warranty and, if so, set a time frame for their repair.

Conciliations

When you and your customer cannot agree on whether an item is warrantable, the purchaser or

condominium Board of Directors may ask ONHWP for a conciliation, which takes place at the home in question. Your representative and an ONHWP conciliator will meet the homeowner, and the ONHWP conciliator will inspect the disputed items. The conciliator will produce a written report, usually within 14 days of the meeting, which will rule on whether any of the disputed items are in fact warrantable.

When items are judged warranted, the conciliation is said to be a *chargeable conciliation*, and therefore counts toward establishing your after-sales service rating in the Program's Home Buyer's Guide to After-Sales Service. If the conciliation items are judged non-warrantable, the conciliation has no effect on your after-sales service record.

If you do not agree with a conciliation decision, you may appeal it to the Commercial Registration Appeal Tribunal (CRAT). The method you use to appeal to CRAT is as follows:

When you fail to do work requested as a result of a conciliation, we may have the work done and invoice you for it, along with an administration fee. Or we may make a cash settlement with your purchaser and invoice you for the cost. In either case, if the invoice is not paid you would receive a Notice of Proposal to revoke your registration as a builder.

This Notice of Proposal is the document you can appeal to CRAT. Consult your lawyer to find out more about the workings of CRAT and presentation of a case before the Tribunal.

IMPORTANT: Do not ignore invoices from ONHWP for the above-mentioned settlements unless it is your intention to take the case to CRAT. If you do ignore them, and then do not resolve the case before the Tribunal, your registration would be revoked and any further construction you do would result in your being prosecuted as an unregistered builder.

- The Program has a variety of helpful literature for both home purchasers and builders. Call your nearest Regional Office for information.
- We can also supply a guest speaker for your meeting or seminar, to talk about the Ontario New Home Warranty Program and you.

Offices of the Ontario New Home Warranty Program

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